Rogue Justice

What Really Sparked the Vendetta Against INSLAW

By MAGGIE MAHAR

TWO weeks ago, *Barron's* told the story of INSLAW, a small software company that landed a $10 million contract with the Justice Department in 1982. Bill Hamilton, INSLAW'S 42-year-old founder, was jubilant when Justice bought the Prosecutor's Management Information System (PROMIS), which he had spent his life—and his life's savings—building. But then things took a mysterious and nasty turn. Justice began withholding payments. Contract disputes multiplied. Threats accelerated. Bill Hamilton couldn't understand what was happening or why. But he knew INSLAW's cash flow was shriveling. By 1985, INSLAW was in financial shambles, and Bill Hamilton ended up in federal bankruptcy court. And there, last fall, a federal bankruptcy judge handed down an astonishing ruling.

Judge George Bason found that the Justice Department had purposefully propelled INSLAW into bankruptcy in an effort to steal its PROMIS software through "trickery, deceit and fraud." On Feb. 2, 1988, Bason ordered the Department of Justice to pay INSLAW about $6.8 million in licensing fees and roughly $1 million in legal costs. He postponed a decision on punitive damages—which could run as high as $25 million.

Trial testimony revealed an unexplained series of "coincidences" surrounding the INSLAW case, including the fact that Justice appointed C. Madison "Brick" Brewer to oversee the INSLAW contract. Brick Brewer had worked for Hamilton—until Hamilton fired him in May 1976. After listening to Brewer's testimony, Judge Bason wrote that he could not understand why Justice picked a man "consumed by hatred" to administer the contract with a former employer. He also couldn't fathom why top department officials ignored complaints from INSLAW attorneys when Brewer began withholding payments. "A very strange thing happened at the Department of Justice . . .," observed Judge Bason, leaving open the question as to just why, at the highest levels, the U.S. Department of Justice condoned a vendetta against a small, private U.S. company.

It was November of 1987 when Judge Bason rejected a Justice Department motion to liquidate INSLAW. Not quite one month later, Judge Bason learned that he would not be reappointed to the bench. In the past four years, only four of 136 federal bankruptcy judges seeking reappointment have been turned down. Bason was replaced by S. Martin Teel, one of the Justice Department attorneys who unsuccessfully argued the INSLAW case before him.

Bason observes that the Justice Department will now have a "third bite of the apple" on the question of punitive damages. Judge Teel has recused himself from the case, and the Justice Department is appealing. So INSLAW vs. the United States of America hangs in limbo.

The INSLAW case also left a Justice Department whistleblower waiting for the verdict on his 21-year career. When *Barron's* began reporting the INSLAW story two weeks ago, we interviewed Tony Pasciuto. Pasciuto revealed how a Justice Department colleague responsible for paying contractors' bills said he divided them into three piles: "One pile he would pay right away, the next pile when he got around to it, and then he opened a drawer and pointed to some invoices in the drawer and said, 'These invoices may never get paid. If you're on the bad list you go in this drawer.'" INSLAW was on the bad list.

Pasciuto also repeated what he had been told by Cornelius Blackshear, a federal judge and former U.S. Trustee based in New York. Blackshear had confided that his Justice Department superior in Washington was pressuring him to send someone down to D.C. to help liquidate INSLAW. Apparently, Washington wanted to make sure that the job was done.

When INSLAW's lawyers deposed Blackshear, he confirmed the story. During INSLAW's suit, Judge Blackshear recanted. Meanwhile, about one hour after Pasciuto was subpoenaed to testify, his superiors in the Justice Department offered him a long-awaited transfer to Albany, N.Y.

Feeling scared and "out there all alone," Tony Pasciuto bought a house in Albany and changed his story. Close to tears, he recanted on the stand. Judge Bason recalls the scene: "Mr. Pasciuto seemed to be basically a very honest person who had been caught up amongst a gang of very tough people—and he just didn't know what to do."

According to Pasciuto, after he testified, Judge Blackshear met him at a party and said, "I'm sorry. . . . These people came up from Washington and the U.S. Attorney's office. I got confused. I thought that by changing my story I would hurt less people." When *Barron's* read Pasciuto's version of the conversation to Judge Blackshear, a weary-sounding Blackshear confirmed it: "I don't remember the specifics word for word. But I do remember the conversation. And I don't have any problems with what Tony remembers."

Meanwhile, after Tony Pasciuto recanted in court, the Justice Department told him, "Sorry, the procedure was changed. No transfer to Albany." Then, B. Boykin Rose, one of the Justice Department officials who resigned last week, wrote a letter to Deputy Attorney General Arnold Burns—another member of the Justice group who bailed out—recommending that Pasciuto be fired.

When *Barron's* last talked to Pasciuto, he was commuting from the new house in Albany to a job in Washington, where, he said, "I feel like I'm under house arrest." And he was awaiting the end of his 21-year career in government service.

"My boss, Thomas Stanton, can't fire me," Pasciuto explained. "The Deputy Attorney General, Arnold Burns, will fire me. How does it feel to know that the Deputy Attorney General of the United States wants to destroy a GS15? It's scary. It scares me to death." Last week, Burns led the dissidents out of the department.

Tony Pasciuto's tale is chilling. And it raises two equally disquieting questions: Why did the U.S. Department of Justice want to liquidate Bill Hamilton's software company? And, how high did the coverup of the scheme to destroy INSLAW go?

Illustrations: William Waltzman

WHEN six Department of Justice officials resigned last week, department spokesmen insisted that they were NOT leaving because they feared Attorney General Edwin Meese was about to be indicted. Nor had they beaten their wives—should anyone ask. But, according to *Barron's* sources inside Justice, their exodus represents the climax to a much larger, subterranean game of musical chairs that has been going on in the Department of Justice for the past 18 months.

"I know of at least 50 or 60 career government employees who have been reassigned or forced out," says one department insider. Another charges the department with using FBI background checks in order to manufacture reasons for forcing employees to leave. "They're trying to find—or force—openings for political appointees that they want to bury as what we call 'moles' in the department," explains a longtime Justice Department hand. "They bury the moles so that the next administration can't find them."

The moles, he goes on, are political appointees who are moved into GS (government service) jobs normally held by career government employees. "It could take the next administration two years to figure out who are the career employees and who are the political appointees dropped into their slots," he says. "In the meantime, the moles will be in place—and they'll have the historical knowledge of how the organization works—everyone else will be gone."

But even while the moles are burrowing in, the rumor among them is that sunlight is about to flood the shadowy reaches of the department. For last week's resignations suggest that Special Prosecutor James C. McKay is coming closer to addressing the question: "Was there justice at Justice during the past four years?"

The INSLAW affair suggests a disquieting answer, for the virtually unpublicized case serves as a window on how Justice did business during the Meese years. In his blistering ruling, Judge Bason charged that the department committed a series of "willful, wanton and deceitful acts ... demonstrating contempt for both the law and any principle of fair dealing."

Originally, Bill Hamilton, INSLAW's founder, thought that only one mid-level Justice Department official was willfully and deceitfully out to get him: C. Madison "Brick" Brewer, the former employee whom he had fired. When Hamilton and his wife, Nancy, put their six children in the family station wagon and drove to a federal court on June 9, 1986, to file a suit against the United States government, they firmly believed that Brewer was their nemesis. But as the trial progressed, their certainty gave way to doubts. Why did Justice put Brewer in that critical and, under the circumstances, highly improper position—and allow him to remain? Why did the Justice Department refuse to settle? Why were the government's lawyers, seemingly not satisfied with bankrupting INSLAW, pressing so hard to liquidate the company? When the trial was finally over at the end of 1987, Bill and Nancy Hamilton had won their case, but they still wanted to know why their company was near ruin. So they followed the counsel of Elliott Richardson, one of their attorneys: They sat down at their dining room table, made a list of all the anomalies in the baffling case, and tried to puzzle out the mystery.

"These were all things we were aware of, yet until you organize them and put them side by side, you don't see them," Hamilton observes.

"But seeing the strange incidents and coincidences all together, suddenly it popped out at me. There was a cover-up—and it wasn't just to protect Brick Brewer. For instance, someone had persuaded Judge Blackshear to recant under oath within 48 hours of his original deposition. Who would have that power? You don't do that to a federal judge to protect Brick Brewer—it's too risky. That's when I became convinced then that there was criminal liability at the highest levels of the department. Then, I started to look at the pieces. And, every time I picked up a rock and turned it over, it seemed to fit."

Now, looking back five years, Bill Hamilton believes he understands the reasons for the oppressive behavior of the Justice Department. And he thinks he had an early warning about the department's methods. But he didn't take the warning phone call seriously.

As Bill Hamilton tells it, it was April of 1983, and he was sitting in his office—right across the street from the Washington Post—when he received the call from Dominic Laiti, chairman of Hadron Inc.

"Laiti identified himself, and said that Hadron intended to become the leading vendor providing software for law enforcement nationwide," Hamilton recalls. "He said they had purchased Simcon, a manufacturer of police-department software—and Acumedics, a company that provides computer-based litigation support services for courts. 'Now,' Laiti told me, 'we want to buy INSLAW.'"

"I told him he had just described our ambition," Hamilton relates. "We intended to become the major vendor of these software services ourselves—and we were not interested in being acquired."

But Laiti kept pushing, and, according to Hamilton, boasted, as he remembers, "We have very good political contacts in the current administration—we can get this kind of business."

The words would reverberate in Hamilton's memory later, but, at the time, he didn't heed the implicit threat. He just repeated, "We're not interested in selling," whereupon, he says, Laiti retorted, "We have ways of making you sell."

The story sounds fantastic. Laiti calls it "ludicrous." Is Hamilton making it up? "I would think the whole tale was fantasy—if I hadn't been involved in investigating the Iran-Contra affair," confides a Senate staffer now involved in an investigation of the Justice Department's software contracts. And Judge Bason states that Hamilton was a level-headed witness with a scrupulously honest memory.

"I was particularly impressed in the last phase of the trial," Bason recalls. "Hamilton could very easily have testified positively in a way that would have been favorable to his case—to an extent of about $1 million. Instead, he testified, 'This is my best recollection—but I am not sure.' The contrast between that and the government witness who was so obviously disingenuous!"

The call from Hadron was strange, so Hamilton remembered it, but in 1983, he shrugged it off. "I politely, but firmly, cut off the conversation. I'd never had a conversation like that with someone in the software industry. I thought Hadron must be new to software—maybe they were used to an industry where this kind of talk was more prevalent."

But now, Hamilton surmises that his troubles may have begun with that phone call. Within 90 days of Laiti's threat, he says, the Department of Justice mounted its attack. And, Hamilton alleges, the attack ultimately became a vendetta, a vendetta that could have been inspired by the convergence of three interests:

Hadron, the brazenly aggressive competitor controlled, from behind the scenes, by a Meese crony from his salad days in California: Dr. Earl Brian.

Brick Brewer, the embittered former employee who, as project manager, was in a strategic position to do INSLAW harm.

D. Lowell Jensen, then the deputy Attorney General, and a ghost from INSLAW's own California past. Jensen had developed a software product to compete with INSLAW and lost—back in the 1970s when Jensen was a D.A. in Alameda County. But Jensen did have the good fortune to meet Ed Meese in that D.A.'s office. So years later, Jensen became top-ranking member of the "Alameda County Mafia," which found a home in the Ed Meese Justice Department.

Continued on Page 36

Judge George Bason (top); INSLAW founder Bill Hamilton (center); D. Lowell Jensen, former deputy Attorney General (left).

Rogue Justice

Continued from Page 7

When Bill Hamilton sat down, in good faith, to negotiate a deal with the Justice Department, the people on the other side of the table were not dispassionate government officials. They were instead a hostile crew, inspired apparently by old scores and private interest. Whether carefully organized or spontaneously launched, the attack was successful—for a while, anyway. When the principals and the department were suddenly in danger of exposure, Hamilton charges, the cover-up spread out to embrace the Justice Department bureaucracy, the IRS, and Jensen's successor—former Deputy Attorney General Arnold Burns—one of the six who quit last week.

"They circled their wagons," Judge Bason wrote. The defense became an offense, and an attorney, a Justice Department whistle-blower, and the judge himself all lost their jobs. Today, only two of the three have found work.

Hamilton is luckier. IBM has become INSLAW's savior—rescuing the company from the auction block, and vindicating the worth of its product. Meanwhile, some Senate staffers looking into the INSLAW case believe that it raises questions about Project Eagle, a much larger scheme to computerize the Justice Department; the $200 million contract is scheduled to be awarded before the end of the year.

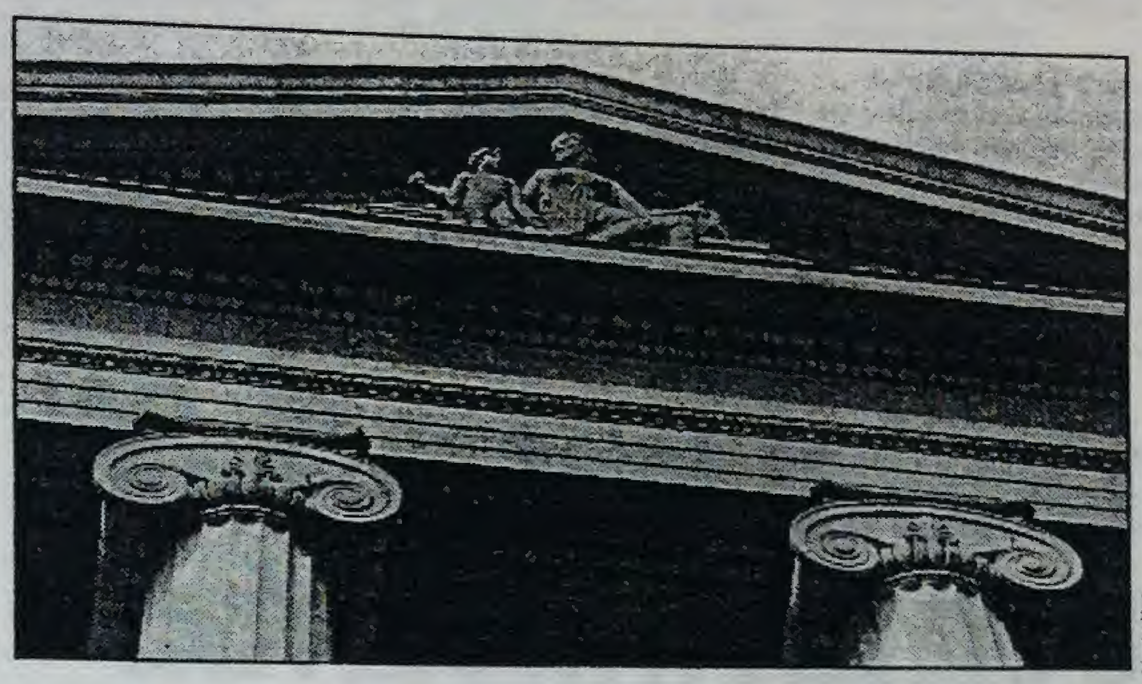
The deeply troubling questions about INSLAW remain. If anything, they are magnified by last week's departures from Justice: "Why?" and, "How High?"

"Start," Bill Hamilton says, "with Hadron." For Hadron is, indeed, as Laiti allegedly boasted, "well-connected in the Administration." It is controlled by Dr. Earl Brian, the longtime friend of Ed Meese who owns Financial News Network (*Barron's*, Feb. 29). In fact, business dealings between the Meese family and Brian's company imperiled Meese's 1984 nomination. And Hadron, Hamilton charges, is one of the keys to the mystery of why INSLAW became the victim of rogue justice.

Hadron boasts a history replete with acquisitions, lots of government business—and brushes with the SEC.

The outfit emerged in 1979 from the ashes of Xonics, a notorious high-tech fiasco founded and headed by a colorful wheeler-dealer named Bernard Katz. *Barron's* described Xonics in 1976 as a company with a knack for "recognizing income as fast as possible and deferring expense as long as it decently could."

In 1977, the SEC brought a lawsuit against Xonics, accusing top management, including Katz, of fraud and manipulating the stock's price, in part by using Xonics stock to acquire other firms. Besieged by two shareholder suits, Xonics agreed to a permanent injunction in April of that year. The company did not admit to any wrongdoing.



Marty Katz

But the nimble survived. In 1979, Dominic Laiti gathered a group of former Xonics executives, and bought Hadron. By 1983, the company was lauded in the press as "an investment banker's dream."

For the child had, it appeared, inherited the parent's acquisitive streak, snapping up nine companies in just three years. The offspring did run into a few SEC snags of its own, however. In 1981, the SEC ruled that the limited partnerships Hadron had set up to fund its R&D efforts were in truth a form of loan financing rather than a source of revenue. By 1982, Hadron had lost $4.5 million and another shareholder suit was pending.

But by 1983, Dominic Laiti's group appeared to be on a roll, acquiring their way into an exciting new industry: lasers. Laiti was quoted as saying, "There's the potential for very, very rapid growth."

Unfortunately, the roll turned out to be a very, very rapid roller-coaster. By February of 1984, Hadron was announcing sale of its "money-losing laser-equipment division." In the third quarter a year earlier, Hadron had earned a penny-a-share profit, but by early 1984, it was sinking $1.2 million into the red. Hadron's ups and downs continued: a loss of $231,000 for the 1986 fiscal year, a profit of $852,000 a year later—despite a 13% decline in revenues.

Since 1979, the price of Hadron's stock has followed the same pattern, swinging wildly from its high of 6¼ in December of 1980 to a low of ¾ in March of 1985. In the past couple of years, the stock has been trading in a narrower range between ¾ and 1 11/16, and an investor complains that as far as he knows, the company hasn't had a shareholders' meeting since 1983. "I'm not so much perturbed that they don't meet—I wouldn't care if they never met, if the the stock were up around $5 or $6," this sizable holder laments.

Still, Hadron has kept bouncing back—with a little help from Uncle Sam: namely, contracts with the Pentagon, a fat settlement with the Agency for International Development and, most recently, a gigantic contract with, yes, the U.S. Department of Justice.

Hadron's government connection can be traced to Earl Brian, who was president of Xonics, Hadron's parent, until October of 1977. Brian slipped away from the company discreetly, just six months after Xonics rolled over and agreed to the SEC injunction. Brian was never charged with any wrongdoing; four Xonics officers were required to sign the consent decree, and he was not one of them.

Ostensibly, Dominic Laiti led the investor group that then rescued Hadron from the ruins of Xonics, but somehow Brian managed to keep his hand on the levers. Today, Laiti—the man who allegedly phoned Bill Hamilton—is Hadron's chairman, but Brian's business-development company controls four of the six seats on Hadron's board.

In March of 1981, Brian resigned from Hadron's board in order, he said at the time, "to divest himself of Hadron to facilitate future transactions" between his business-development company, Infotechnology, and Hadron "under the Investment Company Act of 1940." But by January 1984, Brian was back on Hadron's board, and, according to the 1987 annual report, he's still there, though Hadron is continuing to do deals with Infotech. In October 1987, Hadron sold Atlantic Contract Services to Infotech at book value for a combination of cash and Infotech common stock in a deal valued at roughly $300,000.

"Brian does an awful lot of buying and selling," the disgruntled Hadron shareholder observes. "He's making money at it, but I'm not sure his shareholders are making money. I know that, as a shareholder of Hadron, I'm not making any money."

Still, in the spring of 1987, Hadron moved into the black, in large part because it received $1.6 million from the Agency for International Development. The AID settlement came after the U.S. government cancelled a Hadron subsidiary's business with Syria.

But the AID money wasn't the only lucky boon from Uncle Sam. The government has long been a Hadron client: In the 1987 fiscal year, approximately 34% of the company's revenues came from the Department of Defense. And most recently, a Hadron subsidiary, Acumedics, locked up a $40 million contract with the Department of Justice.

Hadron never did acquire INSLAW. But there's more than one way to skin a Justice Department software contract. Last October, Hadron's Acumedics division signed the $40 million deal to provide automated litigation-support services for Justice's Land and Natural Resources division.

When the Acumedics contract was awarded, competitors groused that the bidding process was unfair. Justice officials respond that all bids went through a stringent review process.

"There was absolutely no pressure on me. It was one of the cleanest procurements I've been involved in," recalls Steve Denny, the contracts officer on the case.

Justice Department officials also pointed out that the $40 million deal was essentially a continuation of a 1983 contract. Acumedics began doing business with the Justice Department in 1970 as an 8(a) minority business. In 1983, Acumedics was acquired by Hadron—and lost its 8(a) status. But even without the favored status, Hadron somehow managed to hold onto the business, and win a four-year competitive bid contract. Shortly after the acquisition, Earl Brian reappeared on the Hadron board, and, recalls a former Hadron executive, told the board, "If we needed any help in marketing at Acumedics, he had been a member of Reagan's Cabinet, he knew people—and would be willing to make phone calls." The Hadron alumnus adds: "He was just being nice." According to Federal Computer Week, a trade publication: "A competitor for the 1983 contract, who declined to be named, said his company no longer bids on Justice Department contracts. He explained that, after losing the 1983 contract to Acumedics, 'We took a look at their bid compared to ours, and it was about $1.5 million over ours.'"

Now, the size of Acumedics's newest deal with the government has raised old questions about the man behind the Hadron subsidiary, Dr. Earl Brian, and his connection to Ed Meese. A venture capitalist, and former neurosurgeon, Dr. Brian practiced medicine in Vietnam, then returned to the States, where he became health and welfare secretary in then-Gov. Reagan's California cabinet. There, he served with Ed Meese, Reagan's chief of staff until 1979. Today, Brian owns and oversees Infotechnology (which controls Hadron), the Financial News Network, and, most recently, he headed up an investment group that bought the right to run United Press International.

The Brian connection became an embarrassment during Ed Meese's confirmation hearings when Meese acknowledged that his wife, Ursula, borrowed $15,000 from a Meese adviser, Edwin Thomas, in order to buy stock in Brian's company. Coincidentally, just six months later, Brian lent $100,000 to Thomas, who by then needed money himself—and had become a member of the White House staff. Neither Meese nor Thomas listed the loans on their financial disclosure statements. Meese paid no interest, and

only partial interest. ng a six-month investi- a, independent counsel cluded that there was no asis for criminal charges against Meese, and while "inferences might be drawn from Mr. Thomas's contact with Dr. Brian ... whether Mr. Thomas or Dr. Brian committed a violation of law was not within our jurisdiction. Even if we were to make an assumption that Mr. Thomas might have been acting on insider information, we have been given no evidence by the SEC."

Bill Hamilton learned of the connection between Hadron, Brian and Meese only after the INSLAW trial ended. But then, remembering what Hadron's Chairman Dominic Laiti said about being politically connected—not to mention "ways of making you sell"— Hamilton thought he glimpsed an ominous pattern.

Hamilton believes the Justice Department mounted its attack 90 days after the Hadron phone call, "with the apparent objective of forcing INSLAW either to agree to be acquired, or into bankruptcy." Earl Brian, Hamilton is convinced, would have been happy to pick up INSLAW cheaply—at a liquidation sale.

Moreover, Hamilton has reason to believe that the No. 2 man in Justice, D. Lowell Jensen, wasn't at all disposed to save INSLAW from the auction block. For, years earlier, Jensen had competed with INSLAW's product, PROMIS, head-on. While holding public office in Alameda County, Calif., Jensen was promoting a rival software, DALITE, that he hoped would be used statewide. Jensen lost.

Jensen served as Alameda County district attorney in the early 1970s and during that time he tried to persuade other DA offices to adopt DALITE, the case-tracking software system that he helped develop. To that end, Hamilton alleges, Jensen urged the California District Attorneys Association to incorporate. By incorporating, the association would be in a position to apply for grants, receiving and administering funds needed to finance DALITE training statewide. But, Hamilton recalls, the very month that the association finally incorporated, the Los Angeles District Attorney's office, the state's largest, chose INSLAW's PROMIS software—dashing Jensen's hopes for DALITE.

Larry Donoghue, now deputy district attorney for the County of Los Angeles, remembers the keen rivalry. He was in charge of selecting software for the L.A. office at the time, and he recalls visiting Alameda County while making on-site inspections: "Jensen called me into his office and I went away feeling what I regarded to be unusual and significant pressure to select the DALITE system. But PROMIS was a more suitable system for a large office. After I made the recommendation to L.A., I remember my conversation with Joseph Busch, who was district attorney there at the time. I said, 'Joe, what's your reason for hesitating?' He said, 'Larry, there is resistance to my selecting PROMIS.' The resistance couldn't have come from within the L.A. office," Donoghue adds, "no one there knew anything about software. By a process of elimination, it must have come from Alameda County."

When *Barron's* attempted to reach Jensen for a reply, his office stated that, because the INSLAW case is still pending, he could not comment. But during the trial, Jensen conceded that he had been a critic of INSLAW's software. Yet, he insisted, DALITE was not a commercial product available for sale to the public, and he had no financial interest in it.

Jesen didn't own DALITE any more than Bill Hamilton owned PROMIS when he first invented it. Like DALITE, INSLAW's PROMIS began as a government product. Bill Hamilton developed it while working as a consultant for the U.S. District Attorney's office in D.C. in 1970, and improved it while working for a not-for-profit company funded by he Justice Department. PROMIS became commercial software only after Hamilton left this last job in 1981, formed INSLAW, and raised private funds to refine PROMIS. The software then became a proprietary, and highly profitable, product. Presumably Jensen might have had the same luck with DALITE—if PROMIS had not won the California race.

Instead, Jensen remained at his post in Alameda County for 12 years. And from 1959 until 1967, Ed Meese served with Jensen, as an Alameda deputy district attorney.

When Ronald Reagan became President, Ed Meese recommended that his former colleague, Jensen, be appointed assistant Attorney General in charge of the Criminal Division. In 1983, when Rudolph Giuliani resigned as associate Attorney General—the No. 3 spot in the department—Jensen ascended to that post.

So in early 1984, when Edwin Meese became Attorney General, his old Alameda Country compatriot was already in place. And Jensen was not alone. A network, nicknamed the Alameda County Mafia, already was ensconced in Justice. No fewer than six former Alameda County law-enforcement officials held positions ranging from deputy assistant attorney in the tax division, to commissioner of naturalization and immigration. The former Oakland deputy police chief had snagged

Continued on Next Page

...ue Justice

...ue from Preceding Page

a spot as director of the National Institute of Justice.

Under Meese, Jensen rose to No. 2, and developed a reputation as a buffer between Ed Meese and his critics. The 58-year-old Democrat was described as "soft-spoken" "apolitical" and a "gentleman of the old standard" in a 1986 New York Times tribute, which added, "Colleagues say that Mr. Jensen, better than anyone else at the Justice Department, knows how to duck."

The Justice Department's diplomat had to duck when congressional investigators looking into the Iran-Contra affair reportedly found a Justice Department memo dated March 20, 1986, saying that Deputy Assistant Attorney General D. Lowell Jensen was giving a "head-up" to the National Security Council, warning that Miami federal prosecutors were on Ollie North's trail.

Bill Hamilton believes Jensen displayed the same talent for diplomatic bobbing and weaving throughout the INSLAW affair. When Hamilton pieced together the anomalies, he realized Jensen's rise to power occurred in the fateful spring of 1983, when he received the call from Hadron, and all of his troubles began.

"Jensen was promoted to associate Attorney General in May or June of '83—and that's when all the contract disputes came up," Hamilton points out. Jensen exhibited a strong interest in the software contract and even served as chairman of the PROMIS oversight committee.

In December of 1983, INSLAW's counsel, Elliott Richardson, and Hamilton met with the assistant Attorney General for administration, Kevin Rooney. They expressed their concern that Brick Brewer, the project manager on the INSLAW contract, was biased against the company because Bill Hamilton had fired Brewer some years earlier. Rooney testified in a deposition that, a week later, he told Jensen's oversight committee that Richardson's proposal seemed reasonable. It appeared that the dispute could be resolved. But Rooney left the committee meeting early. After he was gone, Hamilton says, "Mr. Jensen and the other members of the committee surprisingly approved a plan to terminate the word-processing part of the INSLAW contract with the department's Executive Office for U.S. Attorneys."

In March of 1983, Hamilton alleges, Bill Tyson, formerly director of that Executive Office, told Hamilton that a Presidential appointee at Justice was biased against INSLAW. In March 1987, Tyson sent a handwritten letter to Jensen, reassuring him that he had denied this allegation under oath—and that he had not named Jensen as the appointee in question. He also sent a note to Deputy Attorney General Arnold Burns.

Versele/Gamma-Liaison

In a deposition, Tyson was asked:

"Did either Mr. Jensen or Mr. Burns ask you to write the letter?"

"No sir."

"Did you not realize that by writing a letter to Mr. Jensen of this type informing him of your intended testimony that he would then be able to develop his testimony to be consistent with yours?"

"That was not my intention."

"But as an attorney, you realize that is a possibility, more than a possibility?"

"Well, that was not my intention. . . ."

In his ruling last September, Judge Bason characterized portions of Tyson's testimony as "so ludicrous that there is no way I can believe anything that the man has to say."

A month before writing the notes, Tyson was removed from his position in the Executive Office for U.S. Attorneys, and he and his secretary were exiled to Justice's Immigration and Naturalization Service—though in positions commensurate with their grade levels.

By protesting too much, Tyson could seem to further implicate Jensen. But, the answer to "How High?" leads even higher. Ed Meese himself may have been involved in a push to force Leigh Ratiner, INSLAW's litigating attorney, off the case.

Ratiner had been a partner at Dickstein, Shapiro, & Morin for 10 years when Elliot Richardson recruited him to take on INSLAW. Dickstein, Shapiro was the law firm of Chuck Colson, of Watergate notoriety. Colson brought in its principal client, the Teamsters Union. More recently, Dickstein, Shapiro became known in the loop as Leonard Garment's firm. Garment, a former colleague says, has been described as "the only attorney in Washington who will put a senator on hold to take a call from a reporter." Garment was former White House counsel to Richard Nixon, and represented Meese during his confirmation hearings.

Meese and Garment put their heads together again after Ratiner filed a complaint in the INSLAW case that named Meese's longtime friend and deputy Attorney General, Jensen.

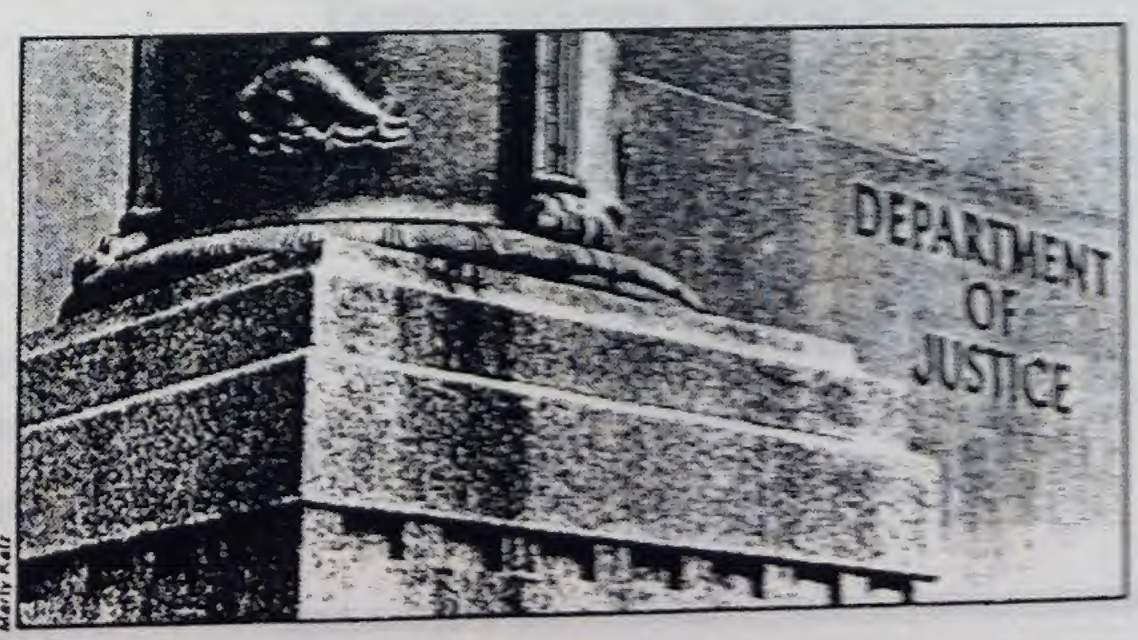
Ratiner, an aggressive attorney with a reputation as very bright, ego-driven, and a loner within the Dickstein, Shapiro firm, relished being viewed as a maverick. So he was displaying his usual independence when he filed the complaint that named Jensen early in October 1986. On Oct. 12, the L.A. Times ran a story airing the INSLAW case and the former rivalry between Hamilton and Jensen. On Oct. 23, Ratiner was asked to leave the law firm. Between Oct. 12 and Oct. 23, Ed Meese talked to Garment about the case.

In a pre-trial interrogatory, Ed Meese conceded that he had a "general recollection of a conversation with Leonard Garment in which Mr. Garment mentioned that he had discussed INSLAW with Arnold Burns." Arnold Burns, the deputy Attorney General who resigned last week, replaced Jensen when Jensen left Washington to take a federal judgeship in San Francisco in the spring of 1986.

When *Barron's* asked Leonard Garment about the conversation, he emulated D. Lowell Jensen. He ducked. "I know there was a suggestion by Meese—or one of his staff—saying he met and spoke to me about INSLAW. Oh, he said it in pre-trial interrogatories? Then . . . it was a question of his recollection."

Garment was more emphatic regarding Ratiner's removal. "No one in the Justice Department or the whole U.S. government or the whole USA suggested to me that anything should be done with Ratiner. Nor do I remember mentioning INSLAW to Meese," he continues. "Look—I met with Meese around the date he mentioned, and I discussed with him a matter of foreign policy. I was on my way to Israel. . . . Memory is so tricky, but I don't have the slightest recollection. . . ." Finally, Garment collected his recollections and summed up his position. "As Sam Goldwyn said, 'Include me out.'"

Ratiner's exit settlement with Dickstein, Shapiro bars him from discussing how and why he left. But Hamilton believes that Burns and Meese expressed dismay at the fact that he had turned the spotlight on Jensen. After Ratiner gave up the case, the firm continued to represent INSLAW, but Hamilton feels their support waned. In January of 1987, Dickstein, Shapiro urged him to settle with Justice for $1 million—of which



Marty Katz

...half would go to pay ...tein, Shapiro's fees. A few ...s later, Hamilton switched ...ttorneys. In September, Judge Bason awarded INSLAW $6.8 million—plus attorneys' fees.

During the trial, Tony Pasciuto's boss, Thomas Stanton, testified to another reason why Meese might have been interested in the INSLAW case: INSLAW could besmirch the U.S. Trustee program. The U.S. Trustee's Office had been recently set up to administer bankruptcies nationwide, and it was Meese's baby. Meese made the decision to take the Trustee program national—even though his predecessor, William French Smith, had planned to ditch the pilot Trustee program.

Two of Pasciuto's former colleagues in the Justice Department allege that the move to keep the U.S. Trustee program was flagrantly political. "It was a way of getting cronies into office. There would be 50 or 60 positions to be filled," one asserts. Stanton, the director of the Trustee program, seemed well-protected within Justice. This former Pasciuto colleague adds: "It was always puzzling to me how he got away with what he got away with. He'd do things that were blatantly wrong and no one would question him—it's kind of scary." Another former employee confirms, "Irrespective of the law, or anything, if Stanton wanted something, he had the ear of the right people at the highest level—straight from Burns to Meese. If he could not get what he needed, he went to Burns."

Outside Justice, bankruptcy attorneys like Patrick Kavanagh, a solo practitioner in Bakersfield, Calif., worry that the Trustee program "concentrates so much power in one government department. . . . It's supposed to act as a watchdog over lawyers and trustees, but the problem is it's more. It has a considerable amount of power to control the administration of cases."

When a case moves from bankruptcy to liquidation, the U.S. Trustee's Office names the trustee, who converts the assets, oversees an auction, and retains appraisers who will put a price tag on the leavings.

The U.S. Trustee's program also links Justice and the IRS. "The thing that's a little frightening about it is that the U.S. Trustee department sees itself as part of the tax-collecting function of government," observes Charles Docter, the bankruptcy attorney representing INSLAW. "The Justice Department represents the IRS, and the IRS is often the biggest creditor in a liquidation."

In the INSLAW case, tax collectors seem unusually determined to see their debt paid immediately. "The IRS showed up in Bill Hamilton's office the day after the trial ended in August. Ultimately, they would demand that he personally pay the $600,000 that INSLAW owes," says Docter. "Usually the IRS calls us before coming to see one of our clients," he notes. "We talk to them on the phone and get it straight." Hamilton doesn't have the $600,000 in his personal savings account.

But Docter responded to the pressure by writing a letter in which INSLAW promised to pay the withholding portion of the taxes within 30 days. "Normally, the IRS would wait that long," he says. "Instead, on the 28th day, they went out and filed to convert INSLAW from Chapter 11 to Chapter 7." Once again, they were trying to liquidate INSLAW.

Lately, Docter reports, an aggressive IRS has been pursuing withholding taxes by going after the individual who owns a company, "but normally they don't go for the jugular immediately and file for a motion to liquidate."

Still on the bench, Judge Bason managed to stop the IRS push to liquidate INSLAW.

When the tax collectors filed to convert INSLAW to Chapter 7, Docter recalls having a memorable conversation with an attorney from the Justice Department's tax division. Docter chided the attorney from Justice, saying: "Look, the judge has already found that you tried to steal the software through 'trickery and deceit.' Isn't it about time you stopped this heavy-handed stuff? Doesn't anyone in the department have enough guts to say, 'We have to start handling this like lawyers?' The whole thing is just completely sullying the Justice Department."

Docter states that the attorney from Justice replied: "I don't set policy around here. The Attorney General does."

And, Bill Hamilton remembers, Ed Meese approved the Justice Department bonuses awarded after the trial was over, in December of 1987. Three of the six who received bonuses were involved in the INSLAW case:

Stewart Schiffer, who directly supervised the INSLAW litigation, received $20,000.

Michael Shaheen, head of the "Office of Professional Responsibility," $20,000. Shaheen wrote a letter to Arnold Burns on Dec. 18 recommending that whistleblower Pasciuto be fired for exercising "atrocious judgment" in telling the Hamiltons what he knew.

Lawrence McWhorter, Brick Brewer's boss, $10,000. McWhorter, Judge Bason noted, said, " 'I don't recall' or 'I don't know' something like 147 times in his deposition." The court found McWhorter's testimony to be "totally unbelievable."

Arnold Burns, deputy Attorney General until just last week, headed up the panel that received recommendations for Justice bonuses.

With no help from Uncle Sam, Bill Hamilton earned his own bonus. IBM has plans to enter a $2.5 million deal with INSLAW that will bail the firm out of bankruptcy. "About $1 million will be used for software development to integrate INSLAW's products with IBM's own database software," Hamilton says, "and $1.5 million will be used to finance INSLAW's reorganization." Details are still being negotiated.

"IBM's law firm has drawn up a contract. We expect to have it signed in two or three weeks," Hamilton adds.

In a 1981 speech, Edwin Meese had lauded INSLAW's work on PROMIS as "one of the greatest opportunities for success in the future." It seems he was right: The IBM deal provides the clearest evidence of all of the product's continuing value.

Still, the IRS persists in demanding immediate payment—even though the pending IBM contract, not to mention the $8 million owed by Justice, suggest that INSLAW will be able to pay its tax bill.

Charlie Docter, INSLAW's attorney, comments on the IRS posture: "The whole thing smacks of a police state. This case scares the hell out of me."

"Scary" is the word most often used by victims of the INSLAW affair. They are angry, but they also can't quite believe it happened.

That the U.S. Justice Department could engage in a vendetta that would end the career of a federal judge, bankrupt a company, force a partner out of his law firm, cause another federal judge to recant under oath, and reach down and wreck the career of a 21-year government-service employee—that's the stuff of a spy novel, set, one would hope, in another country. But resignations en masse from a Department of Justice inhabited by "moles" suggest alarming facts, not diverting fiction.

Bill Hamilton's story is not based on imagination. It's based on experience, and there's considerable circumstantial evidence that he could have been the victim of a California cabal encompassing onetime members of the Reagan gubernatorial cabinet, and alumni of the Alameda County Mafia. Ed Meese belonged to both groups.

Why did INSLAW rate the attention of such a powerful group? INSLAW was, one Senate staffer suggests, the leading edge of Justice's $200 million "Project Eagle," a plan to com-

Continued on Next Page

Rogue Justice

Cont. from Preceding Page

puterize the department's tax division, criminal division and the 94 U.S. Attorney's offices. INSLAW predates the four-year-old Project Eagle, and might well offer an easy entry to any company that wants to participate in that program. The Justice Department has taken pains to say that INSLAW is not involved in Project Eagle. But Senate staffers looking into both INSLAW and Project Eagle aren't so sure.

Project Eagle seems part of the same pattern of musical chairs: John J. Lane, a respected deputy assistant Attorney General for information technology, left last summer, and according to Government Computer News, Justice has lost its four IRM (information resources management) officials with the longest service in the past year. When Lane left, Justice reorganized its computer operations and created a new position, naming Stephen R. Colgate, who had been director of the Treasury Department's Office of Finance, to head Project Eagle.

Asked about his priorities, Colgate was quoted in the trade publication as saying that, for the leadership of the department, "Eagle is the No. 1 priority. Eagle is the technology legacy that this Administration wants to leave behind."

A member of Sen. Christopher Dodd's staff who has been looking into the INLSAW case for more than a year takes a more cynical view:

"If you wanted to wire [fix] something, this would be the project," he confides. "It's been anticipated for a long time. And, it's a lot of money. So, if you wanted to wire something . . . this would be the one."

These days, however, it's unlikely anyone at Justice wants to wire anything. Today, there's a new agenda: Everyone is either burrowing in, or getting out. And, before leaving, there's an urgent desire to tidy up.

Justice had announced its intention to fire Tony Pasciuto two months ago. But in the end, just a week before Deputy AG Arnold Burns resigned, he agreed to meet with Pasciuto's attorney, Gary Simpson, to hear Pasciuto's side of the case.

Five or six officials from Justice were in the room; another three or four—including one who had recommended firing Pasciuto—waited nervously in the hallway outside.

"I was on a roll," confesses Simpson, who is normally matter-of-fact. "It was something else. I was accusing them of all sorts of things, and no one stopped me."

Justice ultimately proposed a painless solution: Pasciuto should walk away, go work somewhere else, and they'd acknowledge he had been a good employee.

During the meeting, Simpson did most of the talking. "Burns was really taking it on the chin," he recalls. "He jerked back a couple of times, but he didn't say anything. More than once, he nodded assent. When I stated that Blackshear had recanted, he nodded again. And," Simpson concludes, "Burns didn't look like he was hearing any of it for the first time." ■

Where Are They Now?

Leigh Ratiner has left the practice of law. The man who once negotiated the Law of the Sea treaty for the U.S. government now runs his own business, LSR Enterprises, a maker of filing systems for lawyers.

Judge Bason, who was denied reappointment as a federal bankruptcy judge, is still unemployed, and looking for work. Judge Bason has no regrets, though he concedes he does not relish controversy. Indeed Judge Bason tried to have himself taken off the INSLAW case when it first came up. "I talked to the chief justice of the District Court and said, 'This has the potential of becoming a very hot potato.' I wasn't sure I wanted to get involved in it." George Bason is not, by temperament, a fighter.

"My wife tells me I'm very stubborn," the 56-year-old former law professor confesses. "It takes me a long time to make up my mind about things and I tend to reserve judgment until I know as much as I can. But when I make up my mind, I'm very firm. To a very aggressive person I may give the impression of being a pushover, and when I prove not to be one, such people can be very angry."

Tony Pasciuto is luckier. He has been offered a good job at a large financial firm based in New York. If he takes it, he'll be making a lateral move from Justice into the private sector. Meanwhile, his attorney, Gary Simpson, awaits final word on Pasciuto's honorable discharge from the department. The papers are scheduled to be signed today.

—*M.M.*

VOL. 2 APRIL 4, 1988 NO. 14

FEDERAL COMPUTER WEEK

THE NEWSPAPER FOR SYSTEMS DECISION MAKERS IN GOVERNMENT

Senate Seeks Info On Inslaw

By LEIGH RIVENBARK

The lengthy battle between the Department of Justice and software company Inslaw Inc. will move from the courtroom to the hearing room later this month when the Senate Judiciary Committee prepares to question Justice officials – including Attorney General Edwin Meese III – about the Inslaw case.

The committee has notified Justice that Meese and other officials should appear at its April 26 hearing to answer questions about the Inslaw case, a committee source said. The lawsuit is still in litigation.

Other sources outside the committee confirmed that the case is expected to be on senators' question lists. Even if no one asks about Inslaw during the hearing, Justice officials will have to answer these questions in writing later, a Hill staff member said.

A bankruptcy judge ruled last September that Justice intentionally stole Inslaw's proprietary case tracking software and drove Inslaw into bankruptcy by withholding payments.

The attorney general's testimony before the Senate Judiciary Committee is a routine appearance that takes place every time there is a budget authorization bill in the works, Justice spokeswoman Amy Brown said. Brown said she had no word on whether the Inslaw case was on Justice's agenda for the hearing.

Links to Burns

Deputy attorney general Arnold Burns, who resigned unexpectedly last week, may be beyond the committee's jurisdiction to require his testimony, as he leaves office April 22, four days before the Senate hearing, the Judiciary Committee source said. Burns' name has been connected with the Inslaw case in three ways. First, court documents show that Burns discussed the case with Leonard Garment, a senior partner at Inslaw's former law firm, Dickstein and Shapiro. Garment also discussed the Inslaw case separately with Meese, and Garment did not tell Inslaw – his firm's client at the time – about the discussions. Dickstein and Shapiro later withdrew as Inslaw's counsel.

Second, Burns' New York law firm once employed Kenneth Rosen, the AT&T Co. counsel whose actions toward Inslaw drew fire from Inslaw's unsecured creditors' committee [*FCW*, Feb. 15]. Inslaw's request for depositions from AT&T says Rosen inundated Inslaw's counsel with oppositions that possibly "aided the unlawful effort of the DOJ to liquidate Inslaw."

Third, while he waited for Senate confirmation to the deputy attorney general's post, Burns gave assurances that he would deal with the Inslaw case personally. In a July 1986 letter to former senator Charles Mathias Jr., Burns wrote, "I will address the problem quickly, take a look at the possibility of an amicable settlement, advise the committee if asked of the status of the case and take every reasonable precaution to ensure that similar controversies are avoided."

The case is already the subject of an ongoing examination by the Senate Permanent Subcommittee on Investigations. Senators have written letters to Justice, and staff members are looking into possible links between Justice's pending office automation procurement and the Inslaw case [*FCW*, March 7].

Inslaw president William Hamilton said he hopes congressional interest will speed the matter's resolution. "The Department of Justice has been denying the obvious in its assertions that it did nothing wrong, and it's about time an organization outside Justice got involved," he said. "A new administration will be at Justice soon, and certainly a new administration will not want to perpetuate this farce." ◄

Washington
BUSINESS JOURNAL

VOLUME 6, NUMBER 45 ONE DOLLAR WEEK OF APRIL 4, 198

PR|IN|IIA-48

Justice Department asks court to drop barring of three staffers in Inslaw case

By BONAR MENNINGER

The running fight between Washington-based Inslaw Inc. and the Department of Justice flared anew March 16 in a Justice Department court brief attacking an injunction issued by Bankruptcy Judge George Bason Jr. last January.

The Justice filing seeks to remove, pending appeal, an order barring three Justice Department officials from any involvement in the ongoing Justice Department-Inslaw litigation.

The officials in question, C. Madison Brewer, Peter Videnieks and Jack Rugh, were found by Bason last September to have participated in a scheme of "fraud, trickery and deceit" aimed at bankrupting Inslaw and appropriating the company's case tracking software, known as "Promis."

According to the recent Justice filing, "the injunction will esentially deprive the government lawyers from their best sources of information and advice. Indeed, (the injunction) is apparently designed to do exactly that."

As well as prohibiting involvement in the actual Inslaw litigation, Brewer, Videnieks and Rugh are also barred from working with the Promis software in any capacity, or working to develop alternative or replacement case tracking software.

Despite the order, the filing acknowledges that Brewer and Rugh, as information management executives in the Executive Office of U.S. Attorneys, "must deal with Promis every day of their working lives."

Justice attorneys argue in the filing that Bason had no legal or constitutional basis for prohibiting involvement by the three officials.

Bason was forced to step down as bankruptcy judge for the District of Columbia in early February after four years on the bench. Some attorneys and others have suggested Bason's removal came as the result of the Inslaw ruling, although no evidence to that effect has emerged.

The recently filed Justice document was submitted to Judge William Bryant, who is slated to consider the Department's appeal of Bason's ruling and the former judge's subsequent award of about $8 million in damages to Inslaw.

Another issue raised by the Justice Department filing is the extent to which the huge, so-called Project Eagle computer procurement may involve Inslaw's Promis software.

The $200 million procurement, the largest ever for the Justice Department, is for the acquisition of 12,000 mini-computer-driven word processors for a Department-wide data management system.

The system will provide a flexible, interactive network allowing for data transfer, electronic mail and a number of other managerial functions between Justice divisions. The contract should be awarded before the end of the year, a department spokesman said.

Although the recent Justice filing states that Project Eagle is in no way predicated on the Promis software, a Justice Department source said that the procurement was mentioned in the brief only because "Inslaw has alleged essentially every allegation they can think of, and we just want this issue to be addressed by the court."

The source, however, did not rule out expanded use of Promis by the Department if Bason's ruling that Inslaw owns the rights to the software is overturned on appeal.

GOVERNMENT COMPUTER NEWS

THE NATIONAL NEWSPAPER OF GOVERNMENT COMPUTING

APRIL 15, 1988
VOLUME 7 NUMBER 8

Justice's Eagle: Trapped in Inslaw Snarl?

BY TIM MCGRAW
GCN Staff

The Justice Department is trying to distance Project Eagle, its $200 million office automation program, from legal entanglements resulting from the Inslaw Inc. bankruptcy case. At the same time, the department is trying to ward off any delays Project Eagle might suffer from the continuing controversy over Justice Department actions toward Inslaw.

The department has filed court papers stating the Project Eagle procurement has nothing to do with the Promis case management software owned by Inslaw, a Washington, D.C., company that found itself in bankruptcy court after the department suddenly canceled $1.5 million worth of contracts.

But Inslaw attorneys argued Project Eagle's success will depend on use of the Promis software that is the subject of the Justice-Inslaw dispute.

The bankruptcy judge in the case ruled last fall the Justice Department had used "trickery, fraud and deceit" in its dealings with the company, seeking to drive Inslaw out of business and appropriate rights to its software. The judge, George F. Bason Jr., awarded Inslaw $6.8 million in retroactive licensing fees and nearly $1 million in attorney's fees [*GCN*, March 4].

Bason also enjoined three Justice employees from participating in any department activities concerning Inslaw because of their "biased, prejudicial and utterly hostile conduct" toward Inslaw. Two of the three individuals — C. Madison Brewer and Jack S. Rugh — serve on the Project Eagle advisory committee and the Eagle technical committee, respectively.

Bason found that Justice personnel forced Inslaw to give up the source code for its case management software before canceling the contracts, allowing Justice to modify the software to run on several different machines.

The Justice Department described the Inslaw case as merely a contract dispute involving data rights and is appealing Bason's decision. As part of its appeal the department filed a motion before U.S. District Judge William B. Bryant asking for a stay of the injunction or at least a clarification so the three employees, all executives in the administrative office for the U.S. attorneys, may continue working on Project Eagle. Department officials claimed in court papers the injunction might delay the procurement.

The department is evaluating bids for Eagle, a systems integration contract to be awarded by mid-1988 for microcomputer and minicomputer hardware and software for office automation and case tracking in Justice's Tax and Criminal divisions and the 94 U.S. attorneys' offices. The U.S. attorneys' offices use Inslaw's Promis case management software.

Asked whether there was any connection between the Inslaw case and Eagle, a department attorney assigned to the case said department officials "didn't believe there was a connection, but we wanted to ask the court if they view it that way."

Speaking only on the condition of anonymity, the attorney said the department was filing the motion "out of an abundance of caution. . . . There's no doubt that Inslaw will allege we were violating the injunction. We believe it's appropriate to bring this to the attention of the court because we have been operating under a cloud."

Commenting on the Justice filing, Michael E. Friedlander, an attorney with the firm of McDermott, Will & Emery, which is representing Inslaw in the appeal, said the motion by Justice effectively asks the judge to approve the involvement in Project Eagle by the three individuals enjoined from participation in anything involving Inslaw or Promis, Friedlander said.

"The facts that were proven in the Inslaw case were so egregious and so demonstrative of the outright bias and lack of impartiality on the part of several critical members of the Department of Justice [Eagle] evaluation team that they could not possibly act on Promis without negatively affecting Inslaw," Friedlander said.

Friedlander also suggested Justice would have to use the Promis software for Eagle because no suitable alternative is available.

Justice's motion said the department had not decided whether the equipment procured under Eagle will be required to run Promis. A computer's capability to run Promis, which is determined by the availability of a COBOL compiler, was not included in the request for proposals until the U.S. attorneys offices, which currently use Promis, were brought into the procurement. That amendment to the RFP mandated COBOL compilers for all CPUs, not just those used in the U.S. attorneys offices.

Stephen R. Colgate, deputy assistant attorney general for information and administrative services and director of Project Eagle since November, recently told *GCN* he did not know why the amendments called for COBOL compilers.

Meanwhile, the Inslaw controversy remains alive, not just in the legal appeals process but also on Capitol Hill, where the Senate Judiciary Committee is preparing for Justice Department oversight hearings. The committee has informed Justice the Inslaw matter is one of several the committee may pursue in next week's hearings.

Another Senate committee, the Permanent Subcommittee on Investigations, has been investigating the Inslaw matter. Some staffers said they want to know whether there is a link to Project Eagle.

The Washington Post

METRO

PRIN/IA-50

Ex-White House Counsel Nominated as U.S. Attorney

By Lee Hockstader
Washington Post Staff Writer

President Reagan nominated former White House counsel Jay B. Stephens yesterday as U.S. attorney for the District of Columbia, the top job in the largest federal prosecutor's office in the nation.

Stephens had been serving in the job in an interim capacity since Feb. 29, when Attorney General Edwin Meese III appointed him to the post. Under a 1986 law, the attorney general has the authority to name an interim U.S. attorney for 120 days pending confirmation of a presidential nominee.

The Senate Judiciary Committee generally takes six to eight weeks to confirm most U.S. attorneys, but that process may be longer if a nomination generates opposition.

There is some speculation in the legal community here that Stephens' nomination could become embroiled in controversy—particularly in this election year—if Democrats on the committee choose to focus on his cameo role in the Iran-contra affair. It was Stephens who called Fawn Hall, Lt. Col. Oliver L. North's former White House secretary, in November 1986 to ask about published reports that North had shredded crucial documents.

Hall testified in the Iran-contra hearings last summer that she told Stephens that "we shred every day." According to Hall's testimony, Stephens, a White House counsel at the time, did not press the matter. The White House then denied the reports of North's shredding.

Stephens, 41, also may come in for criticism in the confirmation hearings for his decision in 1983 not to investigate allegations of bias against a Justice Department employee involved in a contract dispute with a computer software company. Stephens was a high-ranking Justice Department aide at the time. A federal bankruptcy judge, citing the failure to investigate, awarded the company, Inslaw, $6.8 million in damages. The Justice Department is appealing the award.

Stephens, an Iowa native who graduated from Harvard University and Harvard Law School, worked for the U.S. attorney's office as a prosecutor in D.C. Superior Court from 1977 to 1981. In 1981 he joined the Justice Department as a special counsel to D. Lowell Jensen, then became the head of the department's criminal division. He joined the White House as deputy counsel in April 1986.

Inslaw's persistence in its case against the Department of Justice paid off, and the message to federal users is clear—pirates beware.

INSLAW'S HAMILTON AND WIFE NANCY: Litigation is a failure in imagination.

BY MARY JO FOLEY

I ware users being successfully ... to secure the authorization of

PR/IN/IIA-51

SOFTWARE PIRACY

A Small Software Firm Takes on Uncle Sam—And Wins

Inslaw's persistence in its case against the Department of Justice paid off, and the message to federal users is clear—pirates beware.

INSLAW'S HAMILTON AND WIFE NANCY: Litigation is a failure in imagination.

BY MARY JO FOLEY

Since the early 1980s, software vendors have been attempting to make it clear to users that piracy is a serious offense, and that vendors aren't going to take it anymore. Vendors in the microcomputer arena, especially Lotus Development Corp., Microsoft Corp., Ashton-Tate, and a handful of others, are known for relentlessly pursuing copyright violators through legal channels.

What makes the latest case—*Inslaw Inc.* v. *U.S. Department of Justice*—noteworthy is that it is apparently one of the first instances of government computer software users being successfully sued for piracy. In fact, if the number of supportive calls and queries that Inslaw, Washington, D.C., has received from other vendors following its much publicized trial is any indication, federal computer users may find themselves facing much tougher copyright scrutiny.

Chapter 11: Suing the Feds

As anyone who has ever toyed with the idea of suing the IRS or any other federal bureaucracy is probably aware, it's difficult to bring suit against the government. Those government contractors that want to do so must go through a lengthy process to secure the authorization of the Contract Appeals Board.

If a company is in the midst of Chapter 11 bankruptcy proceedings, however, it is able to sue the feds. Inslaw was in just such circumstances, primarily as a result of the Justice department's decision to withhold nearly $2 million in payments owed for software and services. The loophole gave Inslaw the "in" it needed to file against the Justice department for pirating more than 20 copies of Inslaw's legal case-tracking software, called PROMIS.

"We never thought it would be necessary to sue DOJ," says Inslaw president and ceo, William Hamilton. "I had been a contractor with [the department] for 20 years." Hamilton, his lawyers, and even former attorney general Elliot Richardson spent all of 1985 in formal negotiations with DOJ. Inslaw appealed to the deputy attorney general in writing and in person. Finally, Hamilton felt he was left with no recourse. "I don't believe in litigation," he protests. "I see it as a failure in imagination." One of the first to realize there was a case was Nancy Hamilton. She is William Hamilton's wife and assistant. While reviewing some company documents, she noticed certain inconsistencies that led to the conclusion that something was amiss with the DOJ. So, little, $8 million Inslaw sued.

In February, at the end of the three-year U.S. District of Columbia bankruptcy court battle, Inslaw was awarded $6.8 million in damages, not including legal fees and "consequential damages" for lost business opportunities. Both of these will be subjects of an upcoming trial; the date and place of that trial had not been set at press time. Meanwhile, the Justice department is appealing the case in U.S. district court based on the right of bankruptcy court to hear the case in the first place.

"Trickery, Fraud, and Deceit"

Although most industry watchers are still sifting through the Inslaw case to determine what, if anything, it will mean to software vendors and users, some are making early proclamations. All are quick to note that, in many respects, the Inslaw case is unique. The Justice department went further than just pirating the company's software; it engaged in what D.C. bankruptcy judge George Francis Bason Jr. called a concerted campaign of "trickery, fraud, and deceit" to drive Inslaw out of business.

Michael Cohn, an analyst with market research firm Input, Mountain View, Calif., sees the case as indisputable evidence of "the growing corporate consciousness surrounding the piracy issue."

In 1985, the Dallas-based market researcher Future Computing Inc. found that in the $3.5 billion microcomputer office software world, vendors were forfeiting an extra $750 million in revenues due to piracy.

Future Computing did not look at the mini and/or mainframe worlds, and it has not done an update to this study. Late last year, many of the top U.S. software publishers, in conjunction with Apple Computer Corp., created a group—as yet unnamed, with a first-year budget of $850,000—to fight offshore piracy.

Rights Are Not Self-Evident

Others see the Inslaw case more as a lesson for firms doing business with the government. "Companies dealing with the government must be clear about who receives what rights" in terms of software and service procurements, says Michael Friedlander, Inslaw's lead attorney and a member of the Washington, D.C., firm of McDermott, Will & Emery.

"This case is more about government dealings than pricing pitfalls," Friedlander says. "Companies many times are kowtowed into signing standard government contracts. They need to guard against this."

By comparison, there is *BV Engineering Professional Software* v. *University of California at Los Angeles*, which BVE, Riverside, Calif., lost due to an existing law whereby institutions under state government cannot be sued for copyright violations.

In the course of the Inslaw trial, a number of other interesting software pricing and damage assessment issues were raised:

- the value of private sector enhancements of public domain programs;
- the extent to which programs in different, narrowly defined niches can be compared for the purpose of assessment of value or damages;
- the impact of pricing policy changes (term licenses to perpetual licenses) on legal assessments of program value; and
- the extent to which use versus possession may have an impact on disputes over program pricing.

Business Built on Value Added

Of these points, the public domain squabble was at the heart of the Inslaw case; it is the issue around which the Justice department attempted to build its defense.

Like many software and service vendors, Inslaw built its business on value it added to a public domain software program. It sold its timesharing and batch updating services—and, later, its enhanced version of PROMIS—to more than 150 courts and federal, state, and local justice agencies using IBM 370, Wang VS, and Unix System V systems.

Under Court restrictions, and to prevent possible predatory actions on the part of the Justice department and/or other companies, Inslaw is prohibited by law from making the names of any of its customers public.

Desire for a Broader Base

Before filing under Chapter 11, the company, which had already developed and currently markets a tort-claim version of PROMIS for insurance agencies, was working on developing "legal extensions" to its software to broaden its potential customer base. Inslaw counted IBM, AT&T, Wang, and Mead Data Central among its strategic marketing partners.

In March 1982, the company signed a $10 million contract with the Justice department's Executive Office of U.S. Attorneys to install its PROMIS case-tracking software in the 20 largest federal prosecutors' offices nationwide, as well as to develop a version of the program for use by an additional 70 offices.

Although Inslaw's original contract stipulated only installation and servicing of the original public domain version of PROMIS, Inslaw in the meantime had spent more than $8 million to enhance PROMIS and was interested in renegotiating the contract to take into account the work it had done. Justice agreed to a type of on-sight approval policy with Inslaw, but once it obtained a copy of the source code, it promptly refused to negotiate licensing fees for the use of enhanced software. It withheld cost, fee, and R&D payments of $1.8 million, terminated its contract with Inslaw, and went on to pirate more than 20 copies of the privately enhanced software.

By April 1985, Inslaw's billables and the loss of the DOJ contract forced Hamilton to file for Chapter 11 bankruptcy.

When Caught, Users Must Pay

In its suit, Inslaw sought to base its calculation of damages of $6.8 million on its perpetual lease pricing policy. The Justice Department countered Inslaw's claim with an offer to pay no more than

A NUMBER OF INTERESTING SOFTWARE PRICING QUESTIONS WERE RAISED BY THE CASE.

Part II: Inslaw vs. AT&T?

As it looks now, the Department of Justice may not be the only entity likely to be squaring off with Inslaw Inc. In January, the U.S. Bankruptcy Court of the District of Columbia approved Inslaw's petition to be allowed to take depositions from key AT&T Information Systems personnel and legal counsel.

Inslaw's lawyers, McDermott, Will & Emery, are believed to be building a case against AT&T, claiming that it colluded with the Justice department to force Inslaw into liquidation in exchange for favorable treatment in procurement bidding. AT&T did not comment on this charge by press time.

In its pleading, Inslaw alleged that AT&T breached a contract it had established with Inslaw in August 1984 for Inslaw to migrate some of its applications products onto AT&T hardware under Unix. AT&T expected the contract to bring Inslaw $30 million to $40 million over five years.

Once Inslaw had filed for bankruptcy protection under Chapter 11, AT&T moved to terminate its contract with the company—despite assurances from Inslaw that it would be able to deliver product as scheduled as long as AT&T provided it with the appropriate development hardware and software.

$3 million, arguing that the calculation of damages should be based only on how long and to what extent the software was used, and on annual lease arrangements that were available from Inslaw during the period when the department pirated more than 20 versions of PROMIS for use in its regional offices and at least a dozen satellite facilities. Thus, a key issue in arguments for and against Inslaw's claims was how to determine the value of products developed for a unique market.

The technical merits of the Inslaw case was decided largely on the testimony of expert witnesses. Appearing for Inslaw was Bernard Goldstein, a cofounder of the Software and Services Industry Association (ADAPSO) and a principal in the Fort Lee, N.J., investment and software acquisition firm Broadview Associates.

Goldstein concurred with the reasonableness of Inslaw's pricing schedule and the changes the company introduced into its schedule as it shifted from term licensing to perpetual licensing agreements. Ironically, the bottom line, according to Goldstein, is "when users steal software and don't get the enhancements, should they be charged for those enhancements" if and when they are caught. His answer? A resounding yes.

While the court's decision on behalf of Inslaw bodes well for software vendors, the company is hardly out of the woods, and it could be many months before it receives the awarded funds. What the Inslaw case means for software users is more immediate: beware. Even the shroud of federal bureaucratic mystique is not enough to protect pirates. ■

Mary Jo Foley is a Washington, D.C.-based business and technology writer.

The Washington Post

AN INDEPENDENT NEWSPAPER

PRIIN/IA-52

A Justice Department Contract

LAST SEPTEMBER, a federal bankruptcy judge ruled against the Justice Department in a case involving INSLAW, a computer software company. The company had a multimillion-dollar contract with the department to provide software that is used in U.S. attorneys offices across the country. The company alleged that the contract was sabotaged by a Justice Department attorney who had been fired by INSLAW, and when the firm was forced into reorganization in bankruptcy the judge agreed, excoriating the department for "outrageous, deceitful, fraudulent" conduct "demonstrating contempt for both the law and any principle of fair dealing." At the time, it was all too clear that a public accounting was urgent to explain 1) how the former INSLAW employee came to be put in charge of the contract and 2) why no one in the department took seriously the company's charges of conflict of interest.

No such accounting has been made, and a series of recent events has given rise to new charges. The bankruptcy judge who ruled in favor of INSLAW was not reappointed, and even though this decision was made by a judicial commission—not the Justice Department—the judge believes his ouster may be linked to the case. Then the attorney who argued the INSLAW case for the Justice Department was appointed to the vacant position on the bench. And another department official who met with INSLAW principals and discussed possible bias against them in the department was threatened with dismissal.

Now Barron's, a business and financial weekly, has published two long articles about the case that raise far more substantial charges. They boil down to an implication that the Justice Department was engaged in a vendetta against INSLAW designed to put the company out of business so that some friends of the attorney general could make some money. Specifically, these articles point out that another computer company, Hadron, tried to take over INSLAW, a competitor for Justice Department contracts, and that Hadron is controlled by Dr. Earl Brian, an old friend of Mr. Meese.

Department spokesmen deny any impropriety in these contract matters, and they may well be right. But once again there is the familiar pattern of the attorney general's personal friends profiting by doing public business—this time with his own department. The Senate Permanent Subcommittee on Investigations is looking into the INSLAW matter, and the Senate Judiciary Committee intends to raise this case at oversight hearings later this month. These panels have a serious responsibility to get a convincing and detailed explanation from the department or, if that is not forthcoming, to get to the bottom of what could be a major contracting scandal in the Justice Department.

VOL. 2 APRIL 18, 1988 NO. 16

FEDERAL COMPUTER WEEK

THE NEWSPAPER FOR SYSTEMS DECISION MAKERS IN GOVERNMENT

Project Eagle Caught Up In Justice-Inslaw Dispute

By LEIGH RIVENBARK

The Department of Justice and Washington software developer Inslaw Inc. are trading charges in recently filed court papers about the relationship between DOJ's $200 million office automation procurement and Inslaw litigation tracking software, which a court ruled DOJ stole from the company.

In the filings, DOJ maintained that its office automation procurement, called Project Eagle, "does not entail the maintenance, upgrade, expansion or replacement" of Inslaw's case tracking software, called Promis.

Inslaw in turn alleged that Justice's statements about Promis are "calculated to deceive" and that Project Eagle will affect the software's future use at Justice.

The reference to Project Eagle in the case is a new development tied to the roles of three Justice officials. The bankruptcy court's Jan. 25 ruling against Justice included an injunction prohibiting C. Madison Brewer III, Peter Videnieks and Jack Rugh from any future involvement with Promis because, the judge ruled, they were instrumental in misappropriating Promis for Justice.

Brewer is associate director of information management in the Executive Office of the U.S. Attorneys, and Rugh is assistant director for information systems in the same office. Both men are members of Project Eagle advisory committees.

Justice said Inslaw could interpret the injunction to prevent Brewer, Videnieks and Rugh from working on Project Eagle, Justice's largest computer procurement ever. Judge William Bryant, recently appointed to the case, will hear arguments in court on April 28.

"The court should make it clear that the bankruptcy court's injunction does not affect the work of either Mr. Brewer or Mr. Rugh on Project Eagle," the Justice filing said. "Project Eagle will not procure a replacement for Promis."

Because Project Eagle is not related to the Inslaw software, Justice should be able to confer with Brewer, Rugh and Videnieks about Eagle, the department said.

Fears About Promis' Fate

Potential Eagle-Promis links are important because the three Justice officials enjoined from any involvement with Promis are in decision-making positions on Eagle and other procurements.

While Inslaw contends the officials may prejudice the procurement against Inslaw, Justice argues the officials' expertise is essential.

Project Eagle's shopping list includes automated litigation support, word processing, document transfer between divisions and automated legal research. The contract will include hardware, software and maintenance. Inslaw is not a bidder in Project Eagle but fears the department could squeeze out Promis

by replacing it or selecting hardware incompatible with Promis.

Project Eagle will procure computers able to operate case tracking and debt collection systems, but the selection, acquisition or development of such software systems is not included in the procurement, according to Justice's filing.

Inslaw responded that Justice had at different times portrayed Project Eagle as both the first step in replacing Promis and the vehicle for running a modified version of Promis.

Inslaw quoted a September 1986 Justice answer to a vendor's question. The Justice representative said the department would develop a case management system to replace Promis

Inslaw is not a bidder in Project Eagle but fears the department could squeeze out Promis by replacing it or selecting hardware incompatible with Promis.

using hardware and software procured through Project Eagle. In July 1987, Justice said it had modified a version of Promis, named the modified version USACTS-II and might use USACTS-II on equipment procured through Project Eagle. The injunction also may affect two other projects, according to Justice. Videnieks was technical adviser on Justice's contract with Inslaw. Until the court issued the injunction, Videnieks also was contracting officer for procurement of a debt collection pilot system. The debt collection system may replace Promis on some cases in some offices, but the Inslaw software will still be used for tracking some debt collection cases and most other cases, Justice said. Justice wants Videnieks to return as contracting officer for the debt collection system.

Inslaw replied, "DOJ affords Videnieks the opportunity to affect DOJ's present and future use of Promis for debt collection, to Inslaw's detriment, and may already be in contempt of the bankruptcy court's injunction."

Interim Programs

The injunction also may affect a set of PC programs developed at Justice as an interim measure to assist some U.S. attorneys' offices until Project Eagle equipment is in place. The programs, called PC-USACTS, are unrelated to Promis and are implemented in offices that do not use Promis, the Justice filing said. Inslaw argued that the in-house programs will compete with Promis once Project Eagle equipment is in place.

The Inslaw case is before the Department of Transportation Board of Contract Appeals, which handles contract appeals involving the Department of Justice. Justice alleged the injunction prohibits Brewer, Rugh and Videnieks from assisting with Justice's cases before the board and in court.

But Inslaw said Justice had already discussed the interpretation of the injunction with the judge who issued it, former bankruptcy judge George Bason Jr. Justice used Rugh's services extensively in preparing its case after Bason issued the injunction, Inslaw's filing said. ◄

BARRON'S MAILBAG

PR/IN/IIA-34

April 18, 1988

APPALLED
To the Editor:

After reading the first installment of "Beneath Contempt" (March 21), I think the Justice Department should be renamed the KGB. I can't imagine such a thing [a company's being forced into bankruptcy, so that the computer software it had developed could, according to a federal judge's ruling, be stolen through "trickery, deceit and fraud"] being sanctioned in one of our high government agencies.

Throw the rascals out!

MARY F. WEBER
Ocala, Fla.

* * *

April 25, 1988

To the Editor:

Maggie Mahar's article inspires the following *Ode to Justice*:

Oh bountiful, for specious guys,
For ample ways of gain;
For poor performing currency
To cause financial drain.
America! America!
God shed His grace on thee;
And, drown thy hoods
With boosted goods,
From sleaze to shining sleaze.

OWEN S. SURMAN
Boston

* * *

April 25, 1988

HADRON'S VIEW
To the Editor:

The April 4 article "Rogue Justice" contained misleading, as well as inaccurate, statements about myself and Hadron Inc.

I'll begin with Bill Hamilton of INSLAW. As I told your reporter, Maggie Mahar, I do not recall talking with anyone at INSLAW, much less Hamilton. Second, even if I had spoken to Hamilton by telephone, as I have to hundreds of persons over the past five years, I certainly could not, and would not, have made any implied or explicit threats. Third, the first time any member of Hadron's board of directors learned of INSLAW was through media reports of its financial troubles.

Regarding your reporter's suggestion that Hadron is "well-connected in the Administration," Hadron management has never had an interest in being "well-connected." For anyone with knowledge of U.S. government procurement procedures, this is an empty statement. Being "well-connected" is more apt to lessen business opportunities than enhance them. Hadron has no major contract that was not won in an open competitive procurement. This is true with respect to our contract with the Department of Justice. Hadron happens to be eminently qualified in litigation support, having worked in this area for many years. The so-called gigantic contract was won through the open competitive process and has a potential value of $40 million over five years. This level of business is about the same as Hadron had been performing for the Department of Justice, in the same area and business, prior to this specific award. No director of Hadron has asked to [communicate with], nor communicated with, any person in the U.S. government (including the Department of Justice), regarding this contract.

The $1.6 million settlement with the Agency for International Development (AID) had nothing to do with Hadron's 1987 revenues or profit. This settlement was a result of cancellation of a contract through no fault of Hadron. In fact, Hadron still carries $400,000 of costs on its books attributed to this contract cancellation, and has appealed to the Armed Services Contract Appeals Board for resolution of this cost claim. Thus, the AID money is anything but the "boon from Uncle Sam" that Mahar recorded.

DOMINIC A. LAITI
President,
Hadron Inc.
Fairfax, Va.

* * *

May 2, 1988

MORE ON INSLAW
To the Editor:

Three cheers to *Barron's* for publishing "Rogue Justice"! I found Maggie Mahar's two-part article (March 18, April 4) on INSLAW's persecution appalling and very disturbing. Justice may have ultimately prevailed, but at what cost?

Judge George Bason—a man of integrity who did not shirk from duty—was Bill Hamilton's only real defense against a very stacked deck from the "Justice" Department. This is a judge very worthy of the title "Honorable."

Contrast him with Judge Cornelius Blackshear who recanted original testimony with the feeble excuse of fewer people being hurt.

Sitting judges with the integrity, discipline, compassion—and yes—stubbornness of George Bason are the individual citizen's best protection against abusive use of power by appointed officials.

But Bason is forced out, and Blackshear remains. That's scary.

FRED HARMS
Tulsa, Okla.

* * *

Did Meese, aides act to damage software firm?

PR|IN|IA-55

Did Meese, aides damage software firm?

By Steve Goldberg
Media General News Service

WASHINGTON — Congressional investigators are probing allegations that high Justice Department officials, including Attorney General Edwin Meese, may have tried to drive a computer software firm out of business after it rebuffed a takeover bid by another firm partly owned by a Meese friend and former business associate.

The charges are potentially the most serious yet raised against the attorney general because they center on actions taken within the Justice Department, congressional staff members said.

"If the allegations are true, this is a case where Meese has used the Department of Justice to help the financial interests of his friend," one staff member said.

Most other allegations of wrongdoing against Meese have involved instances where he talked to officials of other agencies on behalf of friends and business associates. An independent counsel is investigating some of those events and plans to issue a report this month.

The new matter "has been grotesque," said Bill Hamilton, head of

Continued on page 3, col. 1

Continued from first page

INSLAW, the computer software firm that has been battling the Justice Department for five years. "We now feel that we figured out what happened and it's a very serious perversion of the chief law enforcement agency of this country."

The Senate Permanent Subcommittee on Investigations and the Judiciary Committee are conducting investigations.

Hamilton formed INSLAW in 1981 to market a computer software program designed to help prosecutors keep track of their cases. He got a $10 million Justice Department contract. The program could become much more valuable after the end of this year when the Justice Department awards the first $200 million of a contract to computerize the Justice Department.

The INSLAW contract got off to a bad start. The Justice Department employee assigned to supervise it had been fired by Hamilton from a job in 1976, a judge recently held. The employee denies he was fired.

But Hamilton said the real trouble began in 1983 when he got a telephone call from Hadron Inc., offering to buy him out. When Hamilton refused, he said, Dominic Laiti, Hadron's president, threatened him.

"We have ways of making you sell," Hamilton quoted Laiti as saying. He later added, "We have very good political connections in the current administration."

Laiti said he doesn't recall ever even talking to anyone at INSLAW.

One of Hadron's directors and chief stockholders is Dr. Earl Brian, a friend of Meese's since they served in Gov. Ronald Reagan's Cabinet in California.

Other business relationships between Meese and Dr. Brian were a central matter in a 1984 independent counsel's investigation into Meese that delayed his confirmation as attorney general. Meese was cleared in that probe.

Though a Hadron subsidiary holds a $40 million software contract with the Justice Department, Dr. Brian said he didn't even know about the $200 million project to begin computerizing the Justice Department.

He said that on the advice of his lawyer, he hadn't talked to Meese since the start of the 1984 probe.

"It looks like to me that somebody, somewhere has just decided to use this as a get-Meese operation," Dr. Brian said. "It's made out of whole cloth."

Within three months of the Hadron phone call, Hamilton said, the Justice Department began holding up payments to INSLAW. Eventually, INSLAW was forced to file for reorganization under the federal bankruptcy laws because Justice Department officials wouldn't pay.

Hamilton enlisted former Attorney General Elliott Richardson, who talked with Justice Department officials over several months to no avail.

"I cannot imagine treating any citizen of the United States dealing with the government in a manner that does not have the courtesy, even after months of reiterated efforts, to address the merits of the citizen's position," Richardson later told the bankruptcy court.

George Bason, the bankruptcy judge, ruled in September that Justice Department officials had engaged in "outrageous, deceitful, fraudulent" conduct and had conspired to force the company into insolvency. He awarded INSLAW $6.8 million in damages.

The Justice Department is appealing the award. Agency officials argue that INSLAW did not deliver all the software promised and that their overhead soared during the contract.

In addition, the Justice Department said the software was theirs to use because Hamilton had developed much of it while working under government contract in the 1970s.

Bason said the Justice Department claims were unfounded.

Within months after his ruling, Bason was off the bench, failing to win routine reappointment. His replacement was one of the Justice Department attorneys who had argued against INSLAW before Bason.

"All the people involved in the decision not to reappoint me have failed and refused to state any rational basis for that decision," Bason said last week.

The decision to replace Bason was made by three panels of lawyers and judges, several of whom had worked in the Reagan Justice Department. Bason was accused of administrative failings.

Hamilton blames many of his woes on D. Lowell Jensen, a top Justice Department official from 1981 until he was named a district court judge in 1986. Jensen has denied he ever did anything to hurt INSLAW.

Jensen was Meese's boss in the Alameda County district attorney's office in California in the 1960s. The two have remained close ever since.

Jensen had developed a software similar to INSLAW's in the 1970s and Hamilton said he had consistently disparaged INSLAW's software.

Congressional investigators are probing whether Meese and Jensen, who was Meese's deputy, may have both been involved in trying to drive INSLAW out of business. The reasons for their suspicions include:

• To argue his case in bankruptcy court, Hamilton retained Leigh Ratiner, a law partner of Leonard Garment, who had represented Meese in 1984. After Ratiner filed Hamilton's bankruptcy court complaint against the Justice Department, criticizing Jensen, Ratiner was reportedly forced out of the firm he had worked with for 10 years.

Meese, in sworn testimony, has acknowledged a "general recollection" of the INSLAW case being mentioned in a conversation with Garment.

A congressional staff member said, "My suspicion is the only reason Meese called Garment is to have Ratiner fired."

But Garment said, "If anyone at the Justice Department suggested I fire a partner, I'd throw him out the window."

Ratiner said last week that he once asked E. Robert Wallach, one of the law firm's consultants and a longtime associate of Meese, to intervene. "He told me the case would never settle," Ratiner said. "I assume he had talked to high-level people, either Meese or Jensen."

• Cornelius Blackshear, trustee of the New York bankruptcy office, testified that pressure was applied by his superior at the Justice Department in Washington to have a trustee from New York sent to Washington to take control of the INSLAW bankruptcy and force the firm to liquidate its assets rather than reorganize.

Blackshear, who is now a judge, later changed his testimony, but, according to Barron's magazine, apparently now has returned to his original story.

• Anthony Pasciuto, a Justice Department employee who made the same allegations as Blackshear, has been forced to leave the department.

The independent counsel's office, headed by James McKay, reportedly has recently heard allegations in the computer software matter, but will not take any action. McKay may, however, recommend that another independent counsel examine them.

Meese is already under pressure to resign because of McKay's investigation.

The Washington Post

FRIDAY, MAY 6, 1988

Justice Probing Computer Firm Case

Department Officials Investigated for Possible Perjury

By Elizabeth Tucker
Washington Post Staff Writer

The Justice Department said yesterday it is investigating several department officials for possible perjury arising from their involvement in the case of Inslaw Inc., a local computer software company that a judge ruled last fall the department had tried to force out of business.

Justice Department spokesman John Russell confirmed the investigation, but declined to identify the officials.

In addition, the Associated Press reported yesterday that the Justice Department's public integrity section has heard allegations that Attorney General Edwin Meese III may have had a role in the ouster of an attorney who was working for Inslaw. But a high-ranking Justice Department official said last night that Meese was not being investigated by the public integrity section.

Sources also said yesterday that the tangled Inslaw case is the subject of a probe by the Senate's permanent subcommittee on investigations, chaired by Sen. Sam Nunn (D-Ga.).

Nunn's committee is said to be conducting a wide-ranging investigation that focuses on a number of allegations made by Inslaw and lawyers that represent the firm.

Among them is a contention by Inslaw founders William and Nancy Hamilton that the Justice Department tried to drive Inslaw out of business so that a New York businessman could buy the company's assets and then sell its software to the department.

Inslaw, which has been operating under Chapter 11 of the federal bankruptcy code for more than three years, developed a computer software program for the Justice Department that is used by U.S. attorneys' offices to track cases.

See INSLAW, A16, Col. 3

Justice Probing Department Officials in Inslaw Inc. Case

INSLAW, From A1

Inslaw has alleged that it was forced into bankruptcy because of a vendetta against it by Justice Department officials, one of whom was fired by the company a decade ago.

The Justice Department has repeatedly denied that it tried to drive the company out of business.

But last September, U.S. Bankruptcy Judge George Francis Bason Jr. ruled that the department used "trickery, fraud, and deceit" to steal the rights to Inslaw's product, and that Justice Department officials had tried to force Inslaw to liquidate.

Bason awarded the company $6.8 million in damages, plus legal expenses. The department is appealing the decision.

Earlier this year, Bason's term on the bankruptcy bench was not renewed, and he has suggested that he was forced to step down because of his decisions in the Inslaw case.

The Associated Press reported yesterday that the Justice Department's public integrity section has heard allegations against Meese made by the Hamiltons.

Inslaw has alleged that one of its lawyers, Leigh Ratiner, was fired from the Washington law firm of Dickstein, Shapiro and Morin in 1986 after Meese talked with one of the firm's partners, Leonard Garment.

According to the Associated Press, Garment has called the charges "pure baloney," but confirmed that he was interviewed by Justice Department lawyers about the allegation two months ago. Garment could not be reached for comment last night.

Carol Bruce, a deputy of James C. McKay, the independent counsel who has been investigating Meese, confirmed yesterday that McKay's office had passed on to the public integrity section the Hamiltons' allegation about Meese's involvement in Ratiner's firing.

"We referred matters that were brought to our attention by the Hamiltons to the Department of Justice," Bruce said.

However, she said, the Inslaw case is not a part of McKay's investigation of Meese. "There are times when it is appropriate to let [the Justice Department] investigate it before an independent counsel embarks on a full investigation," Bruce said.

According to the Associated Press, the broader Justice Department inquiry focuses on conflicting testimony given in the Inslaw case by Justice Department officials and others connected with the department.

When he decided the case against the Justice Department, Bason said he didn't believe much of the testimony given in the case by some of the department officials who testified.

In one instance that has been cited by Inslaw's attorneys, Anthony Pasciuto, a former Justice Department official involved with the Inslaw contract, testified that he was aware of the vendetta against the company, then recanted the testimony. He later said his initial testimony was correct. Pasciuto since has been forced out of the department.

Among the things the Senate permanent subcommittee on investigations is said to be looking into is Inslaw's contention that the alleged Justice Department effort to force the company out of business may have been part of a wider scheme to allow a New York businessman to take over the company.

A source familiar with the Senate investigation said yesterday, "We're looking into a lot of the allegations that are involved, and that is obviously one of the major allegations."

The subcommittee is taking depositions of people involved in the Inslaw case, sources said. But the subcommittee's attorney, Alan Edelman, declined to comment on any aspect of the investigation or from whom depositions are being taken.

Los Angeles Times

Allegations Against Meese, Others in Collapse of Software Firm

U.S. Probing Possible Perjury in Inslaw Case

WASHINGTON (AP)—Government lawyers are investigating possible perjury by officials during sworn testimony about a firm's charge it was driven into bankruptcy by the Justice Department.

Sources who spoke only on condition they not be identified said the Justice Department's public integrity section is examining conflicting testimony by two former federal bankruptcy trustees and Justice Department officials during a U.S. Bankruptcy Court proceeding last year involving Inslaw Inc.

Public integrity investigators also have allegations in the Inslaw case against Atty. Gen. Edwin Meese III. Those allegations were relayed to the public integrity lawyers by independent counsel James C. McKay, who has been investigating Meese for almost a year.

"We are not conducting an investigation with respect to the Inslaw matter," said Carol Bruce, McKay's deputy. "Any information we have received relating to it we have referred to the Justice Department's public integrity section."

Inslaw alleges that Meese arranged to have their attorney, Leigh Ratiner, dismissed from his Washington law firm in 1986 after Meese discussed the case with one of Ratiner's partners, Leonard Garment.

Garment, who described the allegation as "pure baloney," said he was interviewed by public integrity lawyers about the allegation two months ago.

If the public integrity section finds the allegations about Meese are serious enough to warrant further investigation, it would send them back to McKay, according to a source close to the independent counsel.

The perjury investigation is the latest twist in a complicated case in which Inslaw Inc. charged—and a bankruptcy judge, George F. Bason Jr., found—that the Justice Department stole computer software the company had provided under a $10-million contract with the department.

Bason ruled that the villain was a fired Inslaw employee who went to work for the Justice Department with a consuming desire for revenge.

Bason ordered the government to pay Inslaw $6.8 million for use of the software. He ruled last June that the Justice Department had engaged in "trickery, fraud and deceit' to steal the software. The case has been appealed.

Lawyers for Inslaw have alleged that Cornelius Blackshear, a former U.S. trustee, lied in sworn depositions when questioned about an attempt to force Inslaw's liquidation, sources said.

But the inquiry is focused on all the conflicting testimony in the case.

Blackshear, a bankruptcy judge in New York, changed his testimony about events that occurred when he was a U.S. trustee, in an affidavit and a second sworn deposition.

Inslaw, which filed for reorganization under the U.S. Bankruptcy Code in early 1985, charged in another action before Bason that the Justice Department had deliberately withheld $1.77 million in payments on the contract to computerize 94 U.S. attorneys' offices.

Please see INSLAW, Page 12

NOT FOR RELEASE BEFORE 5 PM
May 6, 1988

Susan Eckelkamp,
Press Secretary
(202) 225-2561

PR/IW/IA-58

BUECHNER CALLS FOR MEESE RESIGNATION

Says New Information on Inslaw Case Casts "A Lengthening Shadow"

WASHINGTON--U.S. Rep. Jack Buechner (R-Kirkwood) announced the following today:

"With great disappointment, I must today call for the resignation of Attorney General Edwin Meese from his post at the Department of Justice. After the disclosure of new information regarding the INSLAW case, the Attorney General at best can only serve out his tenure as a magnet of scornful attention, and at worst, as a lengthening shadow over the best accomplishments of the Reagan administration.

"For many months, the Attorney General has been either under investigation or linked to problems within or without his department. His name reoccurs in a growing number of questionable activities. In the best tradition of our legal system, he has been presumed innocent. Those of us who do not believe the press should determine a person's guilt or innocence have granted him in every instance the benefit of the doubt. But now, the doubt has been cast against him. Given these new, most serious allegations, piled upon the heap of previous indiscretions, it is incumbent upon the Attorney General to step down. The Attorney General is not an elected official who can wait for the electorate to determine his fate -- he is the Prosecuting Attorney for the United States of America, and the chief lawyer in a nation of laws.

"General Meese must be held accountable for what transpired in his Justice Department. Many have paraphrased Theodore Roosevelt's maxim that no man is above or below the law. We need to add 'those who enforce the law will be judged as though they were the law.'

"The Judge's decision in the INSLAW case, that the Justice Department had engaged in °trickery, fraud, and deceit' raises serious ethical questions about the events taking place under his watch. For the Attorney General to allow or assent to the calculated destruction of a man's livelihood represents an inexcusable disregard for justice. Whether malfeasant or misfeasant, it cannot be tolerated.

As the American Bar Association's (ABA) Model Code of Professional Responsibility states in Canon 9: "While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

"Considering the time, the allegations and his position as a lawyer, Meese owes it to his staff, his president, and most of all to his client, the United States of America, to voluntarily step down from his position. Time and the judicial system will ultimately judge if Edwin Meese was a violator or a victim.

"The motto of the Justice Department is °Qui Pro Domino Justitia Sequitur'. When the Attorney General does not, as the motto says, °seek justice for the people,' then justice will not be blind; it will be mocked. "

The Washington Post

BUSINESS

PR[IN[IA-59

No Meese Probe

■ Justice Department lawyers have concluded that there is no need for an independent counsel investigation into the actions of Attorney General Edwin Meese III in a case involving Inslaw Inc., a local software company that has claimed that Justice officials attempted to drive it out of business, a department spokesman said yesterday.

William and Nancy Hamilton, founders of Inslaw, have alleged that one of the company's lawyers, Leigh Ratiner, was fired from the Washington law firm of Dickstein, Shapiro & Morin in 1986 after Meese talked with one of the firm's partners, Leonard Garment.

Spokesman Terry Eastland said John C. Keeney, acting head of the department's criminal division, sent a letter two days ago to Charles R. Work, a lawyer for Inslaw, indicating lawyers in the department's Public Integrity Section had reviewed the allegations against Meese and concluded there was no need for further action.

PR/IW/IA-60

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

ARTHUR OCHS SULZBERGER, *Publisher*
ARTHUR OCHS SULZBERGER JR., *Deputy Publisher*

MAX FRANKEL, *Executive Editor*
ARTHUR GELB, *Managing Editor*
JAMES L. GREENFIELD, *Assistant Managing Editor*
WARREN HOGE, *Assistant Managing Editor*
JOHN M. LEE, *Assistant Managing Editor*
ALLAN M. SIEGAL, *Assistant Managing Editor*

JACK ROSENTHAL, *Editorial Page Editor*
LESLIE H. GELB, *Deputy Editorial Page Editor*

LANCE R. PRIMIS, *President*
J. A. RIGGS JR., *Exec. V.P., Production*
HOWARD BISHOW, *Sr. V.P., Operations*
RUSSELL T. LEWIS, *Sr. V.P., Production*
ERICH G. LINKER JR., *Sr. V.P., Advertising*
JOHN M. O'BRIEN, *Sr. V.P., Finance & Human Resources*
ELISE J. ROSS, *Sr. V.P., Systems*

Spell Out the Meese Case

James McKay, the independent counsel investigating conflict of interest charges involving Attorney General Edwin Meese, has publicly stated he probably won't seek an indictment. But he also must report to the court that appointed him, and much public speculation now focuses on the content of that report. To hope that it will either explicitly exonerate Mr. Meese or force his resignation, however, is to misunderstand the limited function of the independent counsel.

Mr. McKay is a prosecutor, not a moral ombudsman. His main task is to determine the facts behind allegations of misconduct, and he enjoys enough independence to credibly investigate the highest Federal officials, including the Attorney General himself. But his responsibility remains limited to the facts. They may be damaging or extenuating, but if they don't call for an indictment neither do they call for an essay on ethics from Mr. McKay.

Four years ago a previous Meese investigator, Jacob Stein, walked the proper narrow line. He rejected requests from critics and defenders alike to go beyond his legal charter and render moral judgments about Mr. Meese's acceptance of financial favors from friends who got government jobs.

Mr. Stein did not seek an indictment. He filed a 385-page narrative detailing the facts and accepting Mr. Meese's defense that he lacked criminal intent in several questioned transactions. That narrative was damning enough. It ought to have prevented the Attorney General's confirmation, but the Senate applied the Meese standard — all but outright crooks may serve — and confirmed him.

In one respect Mr. McKay has said he'll go beyond Mr. Stein and handle misgivings about Mr. Meese's questionable but non-indictable conduct differently. He will refer some matters that prove non-criminal to the "appropriate administrative authorities," presumably the agencies of the Justice Department or White House responsible for internal inquiries into ethical lapses. Congress in renewing and strengthening the Independent Counsel Act has made clear that special prosecutors have the same right as regular Federal attorneys to report to other agencies.

Mr. McKay did not say whether those referrals will themselves be made public in his report or otherwise. Regular prosecutors may make such referrals public; so should Mr. McKay. The public may reasonably expect Mr. McKay to produce a report that fully sets forth the charges and the leads pursued and otherwise demonstrates a complete investigation. With that in hand, the public will be capable of drawing its own conclusions.